

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1144

Citations Affected: IC 29-1.

Synopsis: Probate administration. Provides that unless each competent adult heir of the decedent agree to waive the limitation, a court may not appoint the decedent's spouse to be the administrator of the decedent's estate if: (1) an interested person petitions for the appointment of an administrator for the estate of a person dying intestate; and (2) a petition to dissolve the marriage of the decedent and the decedent's spouse is pending in an Indiana court or the court of another state at the time of the decedent's death. Specifies the requirements for the administration of an estate without court supervision and without the consent of the heirs or devisees. Provides that a court may not require the personal representative to file with the court a copy of the inventory of the estate's assets prepared in the administration of the estate without court supervision. (This conference committee report does the following: (1) specifies that the restrictions on the appointment of an administrator for the estate of a person dying intestate apply if a petition to dissolve the marriage of the decedent and the decedent's spouse is pending in an Indiana court or the court of another state at the time of the decedent's death; (2) specifies the requirements for the administration of an estate without court supervision and without the consent of the heirs or devisees; and (3) provides that a court may not require the personal representative to file with the court a copy of the inventory of the estate's assets prepared in the administration of the estate without court supervision.)

Effective: July 1, 1999.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1144 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Page 2, line 16, after "state" insert "**at the time of the decedent's**
- 2 **death**".
- 3 Page 3, line 16, after "state" insert "**at the time of the decedent's**
- 4 **death**".
- 5 Page 3, after line 16, begin a new paragraph and insert:
- 6 "SECTION 3. IC 29-1-7.5-2 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The court may
- 8 grant a petition for administration without court supervision if:
- 9 (1) all the persons referred to in either section 1(a)(1) or 1(a)(2)
- 10 of this chapter have joined in the petition;
- 11 (2) the estate is solvent;
- 12 (3) the personal representative is qualified to administer the estate
- 13 without court supervision;
- 14 (4) the heirs, or legatees and devisees, or the parent (as defined in
- 15 IC 29-3-1-11), or if none, the guardian (as defined in IC 29-3-1-6)
- 16 of an heir, legatee, or devisee, as the case may be, freely consent
- 17 to and understand the significance of administration without court
- 18 supervision; and
- 19 (5) the will does not request supervised administration.
- 20 **(b) In addition, As an alternative to the requirements of**
- 21 **subsection (a), the court may also grant a petition without the**
- 22 **requirements of subdivision (1) and the consent requirement of**
- 23 **subdivision (4) being met, for administration without court**
- 24 **supervision if:**
- 25 **(1) the decedent in the will authorized the administration of the**
- 26 **estate to be unsupervised; and if all other requirements of this**
- 27 **subsection are met.**

(2) the estate is solvent; and

(3) the personal representative is qualified to administer the estate without court supervision.

~~(b)~~ (c) Once a petition for administration without court supervision has been granted **under subsection (a) or (b)**, a personal representative's authority, under such order, shall not be subject to any requirement of court approval or confirmation or be open to collateral attack on account of any defect or irregularity in the proceedings resulting in issuance of the order of no supervision, if the court issuing the order had jurisdiction of the estate.

~~(c)~~ (d) The court may, on its own motion or the motion of an interested person, revoke an order of unsupervised administration and require an administration on terms and conditions which the court specifies if the court finds that such a revocation is in the best interests of the estate, creditors, taxing authorities, heirs, legatees, or devisees.

SECTION 4. IC 29-1-7.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. Subject to ~~section 2(e)~~ **section 2(d)** of this chapter, a personal representative who administers an estate under this chapter may do the following without order of the court:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another

- 1 state, for cash or on credit, at public or private sale; and manage,
- 2 develop, improve, exchange, partition, change the character of, or
- 3 abandon an estate asset;
- 4 (7) make ordinary or extraordinary repairs or alterations in
- 5 buildings or other structures, demolish any improvements, raze
- 6 existing or erect new party walls or buildings;
- 7 (8) subdivide, develop, or dedicate land to public use; make or
- 8 obtain the vacation of plats and adjust boundaries; or adjust
- 9 differences in valuation on exchange or partition by giving or
- 10 receiving considerations; or dedicate easements to public use
- 11 without consideration;
- 12 (9) enter for any purpose into a lease as lessor or lessee, with or
- 13 without option to purchase or renew, for a term within or
- 14 extending beyond the period of administration;
- 15 (10) enter into a lease or arrangement for exploration and removal
- 16 of minerals or other natural resources or enter into a pooling or
- 17 unitization agreement;
- 18 (11) abandon property when, in the opinion of the personal
- 19 representatives, it is valueless, or is so encumbered, or is in
- 20 condition that it is of no benefit to the estate;
- 21 (12) vote stocks or other securities in person or by general or
- 22 limited proxy;
- 23 (13) pay calls, assessments, and other sums chargeable or
- 24 accruing against or on account of securities, unless barred by the
- 25 provisions relating to claims;
- 26 (14) hold a security in the name of a nominee or in other form
- 27 without disclosure of the interest of the estate but the personal
- 28 representative is liable for any act of the nominee in connection
- 29 with the security so held;
- 30 (15) insure the assets of the estate against damage, loss and
- 31 liability and himself against liability as to third persons;
- 32 (16) borrow money with or without security to be repaid from the
- 33 estate assets or otherwise and advance money for the protection
- 34 of the estate;
- 35 (17) effect a fair and reasonable compromise with any debtor or
- 36 obligor, or extend, renew, or in any manner modify the terms of
- 37 any obligation owing to the estate. If the personal representative
- 38 holds a mortgage, pledge, or other lien upon property of another
- 39 person, he may, in lieu of foreclosure, accept a conveyance or
- 40 transfer of encumbered assets from the owner thereof in
- 41 satisfaction of the indebtedness secured by lien;
- 42 (18) pay taxes, assessments, compensation of the personal
- 43 representative, and other expenses incident to the administration
- 44 of the estate;
- 45 (19) sell or exercise stock subscription or conversion rights **and**
- 46 consent, directly or through a committee or other agent, to the
- 47 reorganization, consolidation, merger, dissolution, or liquidation
- 48 of a corporation or other business enterprise;
- 49 (20) allocate items of income or expense to either estate income
- 50 or principal, as permitted or provided by law;
- 51 (21) employ persons, including attorneys, auditors, investment

advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary; (22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(i) in the same business form for a period of not more than five (5) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

(ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporations and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims;

(27) distribute assets of the estate upon such terms as he may impose; and

(28) perform any other act necessary or appropriate to administer the estate.

SECTION 3. IC 29-1-7.5-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.2. (a) Not more than two (2) months after the appointment of a personal representative under this chapter, the personal representative shall prepare a verified inventory of the estate's assets. The inventory may consist of at least one (1) written instrument.

(b) The inventory required under subsection (a) must indicate the fair market value of each item of property of the decedent of which the personal representative has possession or knowledge, including a statement of all known liens and other charges on any item. The property shall be classified in the inventory as follows:

(1) Real property, with plat or survey description, and if a homestead, designated as a homestead.

(2) Furniture and household goods.

(3) Emblements and annual crops raised by labor.

(4) Corporate stocks, including the class, the par value or that the stock has no par value, and if preferred stock, the dividend rate.

(5) Mortgages, bonds, notes, or other written evidences of debt or

1 of ownership described by the name of the debtor, recording data,
2 and other identification.

3 (6) Bank accounts, money, and insurance policies if payable to the
4 estate of the decedent or to the decedent's personal representative.

5 (7) All other personal property accurately identified, including the
6 decedent's proportionate share in any partnership. However, no
7 inventory of the partnership property is required.

8 (c) In preparing the inventory required under subsection (a), the
9 personal representative may employ a disinterested appraiser to
10 ascertain the fair market value as of the date of the decedent's death of
11 an asset that has a value that may be subject to reasonable doubt.
12 Different persons may be employed to appraise different kinds of assets
13 included in the estate. The names and addresses of any appraiser shall
14 be indicated on the inventory with the item or items the appraiser
15 appraised.

16 (d) The personal representative shall furnish a copy of the inventory
17 required under subsection (a), or a supplement or amendment to the
18 inventory, to a distributee who requests a copy.

19 **(e) The personal representative may certify to the court that the**
20 **inventory required under subsection (a), a supplement, or an**
21 **amendment to the inventory has been prepared and is available.**
22 **However, the court may not require the personal representative to**
23 **file a copy of the inventory, a supplement, or an amendment to the**
24 **inventory with the court."**

25 Renumber all SECTIONS consecutively.

(Reference is to EHB 1144 as printed March 26, 1999.)

Conference Committee Report
on
Engrossed House Bill 1144

Signed by:

Senator Bray

Representative Frenz

Senator Lanane

Representative Foley

Senate Conferees

House Conferees